

STATE OF MICHIGAN
IN THE SUPREME COURT

MICHAEL LEGO AND PAMELA LEGO,

Supreme Court No. 149246

Plaintiffs-Appellees,

Court of Appeals No. 312406; 312392

v

Wayne Circuit Court No. 12-007085-NO

MSP DETECTIVE SPECIALIST JAKE
LISS, IN HIS INDIVIDUAL CAPACITY,
ONLY

Defendant-Appellant.

REPLY BRIEF OF APPELLANT MICHIGAN STATE POLICE DETECTIVE
SPECIALIST JAKE LISS

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reply

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Statutes

MCL 600.29661

ARGUMENT

I. The plain language of the Firefighter's Statute bars Lego's claims. Friendly fire is a normal, inherent and foreseeable risk of apprehending dangerous criminals.

The Michigan Firefighter's Statute bars claims that arise from risks that are inherent, normal, and foreseeable in the police profession. MCL 600.2966.

Despite Lego's repeated assertions, Liss does not seek a blanket proscription against the filing of all claims against all government officials. Rather, Liss seeks application of the plain language of the Firefighter's Statute to the facts of this case. Even accepting Lego's complaint allegations as true, his claims are barred because his injuries arise from a risk that is inherent, normal, and foreseeable where police officers are using justified deadly force against an engaged shooter.

Both Lego and Liss were confronted with circumstances demanding an instant judgment. A dangerous criminal had just committed an armed robbery, exited the store still armed, refused to follow lawful orders of police, and pointed a firearm in the direction of Lego, Liss, and other police officers. These officers had to make a split-second decision. Mistakes in judgment are inherent, especially where split-second, life-and-death decisions are being made. Friendly fire can be an unfortunate reality of law enforcement work.

Police officers, and especially specialized task force members, should not face liability for injuries arising from risks that are a normal, inherent, and foreseeable part of their work. It is normal, inherent, and foreseeable that multiple police officers will be present where justified deadly force is being used, that they will

discharge their weapons while in close proximity to each other, and that an officer could make a mistake in judgment during such a fluid and rapidly evolving situation. Liss is entitled to the full breadth of governmental immunity conferred by the jurisprudence of this State. The Court of Appeals erred in holding otherwise.

CONCLUSION AND RELIEF REQUESTED

While an accidental shooting of a fellow officer is an unfortunate accident, friendly fire is a reality of the police profession. This Court should reverse the Court of Appeals, holding that being accidentally shot by a fellow officer is a normal, inherent, and foreseeable risk of the police profession, and especially in light of Lego's work as a member of a specialized task force that regularly engaged in high-risk operations.

For the reasons stated here and in Defendant Liss's application for leave to appeal, Defendant-Appellant Detective Specialist Jake Liss of the Michigan State Police respectfully requests that this Court reverse the March 27, 2014 decision of

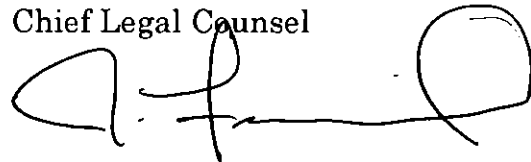
the Court of Appeals for the reasons stated in the dissenting opinion, and remand this case to the trial court for entry of judgment in Liss's favor.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "J. Froehlich", with a large circular flourish at the end.

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